

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201016004**

Release Date: 4/23/2010

Index Number: 1295.02-02

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-112266-09

Date:

December 17, 2009

LEGEND

Corporation	=
Taxpayer	=
A percent	=
Country 1	=
Tax Advisor 1	=
Tax Advisor 2	=
Tax Advisor 3	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Date 1	=
Business	=

Dear :

This is in response to a letter dated March 2, 2009, submitted on behalf of Taxpayer by its authorized representative, requesting the consent of the Commissioner to make a retroactive qualified electing fund ("QEF") election under § 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. § 1.1295-3(f) with respect to Taxpayer's investment in Corporation for the Year 2 tax year.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

In Year 1, Taxpayer and others formed Corporation, of which Taxpayer owns A percent, in Country 1. Corporation is engaged in Business in Country 1 and generates passive income through its activities. The Country 1 income tax filing is prepared by Tax Advisor 1. The US income tax filing of the majority shareholder of Corporation is prepared by Tax Advisor 2, a US person, who has prepared Corporation's information returns since Year 1. Tax Advisor 2 identified Corporation as a Controlled Foreign Corporation ("CFC") under IRC § 957(a), and he filed Forms 5471 on behalf of Taxpayer since Year 1. Based on the representations of Tax Advisor 1, Corporation did not generate any net positive income from Year 1 to Year 3. However, in Year 4, Corporation recognized gain due to the disposition of certain passive assets. Tax Advisor 2 calculated Taxpayer's pro rata share of this gain which Taxpayer included on its tax return for Year 4. On Date 1 with the intention of liquidating or reorganizing Corporation, the majority shareholder of Corporation consulted Tax Advisor 3 who informed Taxpayer that Corporation was in fact a Passive Foreign Investment Company ("PFIC") within the meaning of IRC § 1297(a). Tax Advisor 3 also discussed with Taxpayer the proper subpart F inclusions for Year 4, and he suggested Taxpayer file an amended return for that year.

Taxpayer has agreed to file an amended return for Year 4. Affidavits from Tax Advisor 2 have been submitted that meet the requirements of Treas. Reg. §§ 1.1295-3(f)(4)(ii) and (ii). The PFIC status of Corporation has not been raised on audit.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f) with respect to Corporation beginning with Year 2.

LAW

Code § 1293(a) provides that every U.S. person who owns stock of a QEF at any time during the taxable year of such fund shall include in gross income 1) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such taxable year, and 2) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such taxable year.

Code § 1295(a) provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under Code section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under Code § 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for

such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. § 1.1295-3(f)(1), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. The shareholder reasonably relied on a qualified tax professional, within the meaning of § 1.1295-3(f)(2);
2. Granting consent will not prejudice the interests of the United States government, as provided in § 1.1295-3(f)(3);
3. The request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. The shareholder satisfies the procedural requirements of § 1.1295-3(f)(4).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to Corporation for Year 2, provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Phyllis Marcus
Branch Chief
(ACCI:INTL:B02)